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November 18, 2003

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BY HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
c/o Visitronix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

Re: Central Texas Telephone Cooperative, Inc.
Petition for Waiver of Default Payphone Compensation Requirements
Under Sections 64.1301(a),(d) and (e).

Please find enclosed for filing the original and 4 copies of Central Texas Telephone Cooperative's ("CTTC") Petition for Waiver of Sections 64.1301(a), (d) and (e) as delivered by CTTC's consultant, John Staurulakis, Inc. (JSI).

The filing is made by and signed by CTTC. Should you have any questions regarding this matter, please call Delbert Wilson, CTTC Regulatory Affairs Manager, at 325-648-2237.

Sincerely,

Scott Duncan
Consultant for Central Texas Telephone Cooperative, Inc.
John Staurulakis, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the)
Pay Telephone Reclassification and) CC Docket No. 96-128
Compensation Provisions of the)
Telecommunications Act of 1996)

PETITION FOR WAIVER OF SECTIONS 64.1301(a), (d) AND (e)

Central Texas Telephone Cooperative, Inc. ("CTTC"), pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") Rules¹, hereby requests a waiver of Sections 64.1301(a), 64.1301(d) and 64.1301(e) of the Commission's Rules² to exclude CTTC from the requirement to pay default compensation to payphone service providers. Because CTTC is an ILEC, CTTC is included among the universal group of ILECs subject to Section 64.1301 by inclusion of "ILEC" on Appendices A, B and C of the Commission's *Fifth Reconsideration Order* in CC Docket No. 96-128³, CTTC is currently subject to the requirement to pay default compensation to payphone providers for compensable calls. Because CTTC does not carry compensable calls, CTTC respectfully requests that the Commission waive the

¹ 47 C.F.R. § 1.3

² 47 C.F.R. §§ 64.1301(a), 64.1301(d) and 64.1301(e).

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Fifth Order on Reconsideration and Order on Remand*, FCC 02-292 (Rel Oct 23, 2002) (*Fifth Reconsideration Order*).

requirement under Sections 64.1301(a), 64.1301(d) and 64.1301(e) of the Commission's Rules for CTTC to make default payments to payphone service providers.

CTTC is an incumbent local exchange carrier (ILEC) serving approximately 7,700 customers in rural Texas. On August 29, 2003, CTTC received a letter and invoice from APCC Services, Inc. ("APCC"). Said letter indicates that APCC is rendering an invoice to CTTC for payphone compensation owed to the payphone service providers ("PSPs") pursuant to the Commission's "True-Up Order" (*Fifth Reconsideration Order*).

1. **A key determination by Commission regarding compensable calls is that an ILEC must carry a call in order to be responsible for payment.**

The *Fifth Reconsideration Order* was intended to bring a "measure of finality" regarding the contentious history of payphone compensation. One purpose of the Commission's action was to ensure that payphone service providers (PSPs) receive fair compensation for every call made using their payphones. The Commission has concluded that Section 276 requires it to "ensure that per-call compensation is fair, which implies fairness to both sides."⁴

In pursuit of this objective and a fundamental criterion to the Commission's rules regarding payphone compensation was to ensure that local exchange carriers ("LECs") "pay payphone compensation to the extent that they handle compensable payphone calls"⁵ This is a threshold criterion that must be satisfied prior to placing a burden for PSP payment on any LEC. Absent satisfying this threshold criterion, a carrier would be

⁴ *Fifth Reconsideration Order*, at 82

⁵ *Id.*, at 55 (Emphasis supplied)

responsible to pay for a compensable call that it did not handle. Clearly such result would not be a fair result for the LEC.

The Commission explained how a LEC can handle compensable communications.

- a. When a LEC terminates a compensable call that is both originated within its own service territory and not routed to another carrier for completion,
- b. When a LEC also provides interexchange service and carries the call as would any other IXC.

2. The Commission's default payphone compensation regime for ILECs is based exclusively on RBOC data that does not reflect CTTC's lack of compensable calls.

Based on at least two data requests initiated by the Commission and directed solely to the RBOCs, the Commission determined that incumbent LECs complete payphone calls that are not routed to other carriers. The RBOC data apparently shows that 2.19 percent of all compensable payphone calls are handled by the RBOCs. The Commission also noted that no other incumbent LEC objected to this data. The Commission concluded that it is appropriate to allocate to "both RBOC and non-RBOC incumbent LECs a percentage of the calls (2.19%) originating from payphones within their own service territories." CTTC did not have cause to object to this data because clearly the Commission was directing its efforts at determining the percentage for "carriers" – those entities who carry compensable communications. As will be shown below, CTTC does not carry any compensable calls. Thus the application of the allocation percentage in the case of CTTC is inappropriate.

3. CTTC never carries compensable calls.

A compensable call is defined by the Commission as a call from a payphone user who calls a toll-free number, dials an access code, or uses a pre-paid calling card without placing any money into the payphone.⁶ CTTC does carry limited intraLATA toll messages that are directly dialed by the subscriber. CTTC's limited intraLATA toll message service does not include any mechanisms for use of access codes or dial-around codes at payphones, thus CTTC does not carry any compensable calls. All compensable calls originating from payphones within the CTTC service area are passed on to other carriers who pay interstate or intrastate, as the case may be, originating access charges. Any compensable calls terminated by CTTC within its service area are received from other carriers who pay interstate or intrastate, as the case may be, terminating access charges. Thus, CTTC does not carry individual compensable calls that both originate and terminate within CTTC's LEC service area or are carried by CTTC as an IXC that are subject to compensation under the criteria established in the *Fifth Reconsideration Order* for either a LEC or an IXC.⁷ Any compensable call terminating in CTTC's service area would have to be an IXC-carried call.⁸ Assuming that CTTC handles compensable calls and requiring it to pay for compensable calls that never handles is not a fair compensation mechanism.

⁶ *Id.*, at 3

⁷ *Fifth Reconsideration Order*, at 55

⁸ CTTC's affiliate, Central Texas Communications, Inc. ("CTC") is an IXC providing long distance service as a reseller. Central Texas Communications is not included on Appendices A, B and C of the *Fifth Reconsideration Order*. As a carrier not included on Appendices A, B and C, Central Texas Communications, CTTC's IXC affiliate, is not subject to default payphone compensation.

4. The Fifth Reconsideration Order provides a mechanism for entities to be removed from the allocation percentage appendices.

Appendices A, B and C of the *Fifth Reconsideration Order* list “carrier” allocation percentages for default compensation factors for, respectively, interim access code and subscriber 800 calls (November 7, 1996 through October 6, 1997), intermediate access code and subscriber 800 calls (October 7, 1997 through April 20, 1999) and post-intermediate access code and subscriber 800 calls (April 21, 1999 forward). In the *Fifth Reconsideration Order*, the Commission noted that entities listed on Appendices A, B, or C could file a petition for a waiver with the Wireline Competition Bureau – such as the instant waiver request – for exclusion from the Commission’s allocation. Note 89 states:

... Any entity named in our allocation that then receives a request for per payphone compensation from a PSP or other entity may, within ninety (90) days of receiving such a request, file a waiver request with the Wireline Competition Bureau for exclusion from our allocation, with a demonstration that the entity provides no communications service to others.⁹

As has been demonstrated above, while CTTC provides communications services, it never provides compensable communications service to others and is a non-carrier as defined by the *Fifth Reconsideration Order*.¹⁰ Accordingly, CTTC requests within 90 days of receipt of its only request for compensation, that from APCC, that it be removed from the Commission’s allocation appendices.

⁹ , Note 89

¹⁰ *Id* , Note 3

5. **CTTC's petition for waiver meets the Commission's standards for granting a waiver of its rules.**

Under section 1.3 of the Commission's Rules, any provision of the rules may be waived if "good cause" is shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.¹¹ Payment of payphone compensation by CTTC absent compensable calls that both originate and terminate within CTTC's network, whereby CTTC does not collect any revenue for the call, apart from revenue under the applicable interstate or intrastate access charge regime, would be inconsistent with the public interest. Additionally, payment of compensation under such circumstances would undermine the policy that entities benefiting from the carrying of compensable payphone originating calls should pay compensation to payphone providers. Moreover, it would be burdensome and inequitable for CTTC and, in turn, its customers to bear the cost of default payment compensation when CTTC carries no compensable calls.¹²

¹¹ Wait Radio v FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) ("WAIT Radio"), Northeast Cellular Telephone Co. v FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

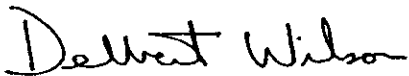
¹² See Wait Radio, 418 F.2d at 1159. The petitioner must demonstrate, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.

CONCLUSION

For the foregoing reasons, CTTC respectfully requests that the Commission waive Sections 64.1301(a), 64.1301(d) and 64.1301(e) and thereby not include CTTC among the entities listed on Appendices A, B and C of the *Fifth Reconsideration Order* required to pay default compensation to payphone service providers. The requested waiver will serve the public interest by allowing CTTC to avoid payment of charges for which no related benefit accrues to CTTC given that CTTC does not carry payphone originated compensable calls.

Respectfully Submitted,

CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.

A handwritten signature in cursive script that reads "Delbert Wilson".

Delbert Wilson
Regulatory Affairs Manager

DECLARATION OF DELBERT WILSON

I, Delbert Wilson, Regulatory Affairs Manager of Central Texas Telephone Cooperative, Inc. do hereby declare under penalties of perjury that the information contained in the foregoing "Petition for Waiver" is true and accurate to the best of my knowledge, information and belief.

Delbert Wilson

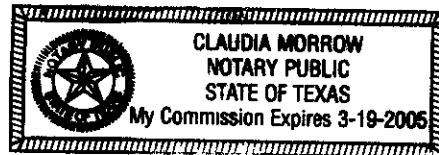
**Delbert Wilson
Regulatory Affairs Manager**

Date: November 14, 2003

SUBSCRIBED AND SWORN TO before me, the undersigned authority on this the 14th day of November, 2003.

Claudia Morrow

**Notary Public in and for
Mills County, Texas**



My Commission expires on: March 19, 2005